

227432

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of May River Water Company, Inc.
for Adjustment of Rates and Charges and
Modifications to Certain Terms and Conditions
for the Provision of Water Service

COPY
Posted:) led
Dept:) SA
Date:) 12/30/10
Time:) 3:05

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

RECEIVED

DEC 30 2010

DOCKET

NUMBER: 2010 - 132 - W

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

Telephone: 803-252-3300

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Other: _____

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input checked="" type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input checked="" type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

Print Form

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WILLOUGHBY & HOEFER, P.A.

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SPECIAL COUNSEL

December 30, 2010

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DEC 30 2010

PSC SC
CLERK'S OFFICE

SC PUBLIC SERVICE
COMMISSION

2010 DEC 30 4:10:55

RECEIVED

*ALSO ADMITTED IN TX

VIA HAND DELIVERY

The Honorable Jocelyn D. Boyd

Chief Clerk/Administrator

Public Service Commission of South Carolina

101 Executive Center Drive

Columbia, South Carolina 29210

RE: Application of May River Water Company, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water service. Docket No.: 2010-132-W

Dear Ms. Boyd:

Enclosed for filing in the above-captioned matter are the original and one (1) copy of the Motion to Dismiss May River Plantation Owners' Association, Inc.

By copy of this letter, I am serving all parties of record in this proceeding with a copy of same and enclose a certificate of service to that effect.

If you have any questions or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/ct

Enclosures

cc: Jeffrey M. Nelson, Esquire
Mr. Joseph Highsmith
Mr. Lee Brewer

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2010-132-W

RECEIVED
2010 DEC 30 11:10:53
SOUTH CAROLINA
PUBLIC SERVICE
COMMISSION

IN RE:

Application of May River Water
Company, Inc. for adjustment of
rates and charges for the provision
of water service.

**MOTION TO DISMISS MAY RIVER
PLANTATION OWNERS'
ASSOCIATION, INC.**

Pursuant to 26 S.C. Code Ann. Reg. 103-829 (Supp. 2010), May River Water System, Inc. ("May River" or "the Company") herein moves the Public Service Commission of South Carolina ("Commission") to dismiss May River Property Owners' Association, Inc. ("MRPOA" or "Intervenor") as a party of record to these proceedings on the grounds that the MRPOA is not represented by a licensed attorney. In support thereof, May River would respectfully show as follows:

1. May River filed its Application in this proceeding on or about September 9, 2010. On September 16, 2010, the Commission Staff issued notice of the filing and hearing and required "[a]ny person who wishe[d] to participate in this matter, as a party of record with the right of cross-examination [to] file a Petition to Intervene in accordance with the Commission's Rules of Practice and Procedure, on or before October 18, 2010."

2. On October 18, 2010, MRPOA petitioned to intervene in this proceeding through its counsels of record, Margaret M. Fox, Esquire, and Cary S. Griffin, Esquire. In support of its Petition, MRPOA asserted that it is "incorporated in the State of South Carolina as a non-profit corporation."

3. By letter dated October 19, 2010, the Commission granted MRPOA's Petition stating "that the Commission's Rules and Regulations and existing South Carolina law require participation by an attorney to practice in South Carolina for the representation for the interests of any person, group of persons, corporation or partnership." (Original emphasis omitted).

4. By letter dated December 22, 2010, Margaret M. Fox, Esquire and Cary S. Griffin, Esquire, withdrew from their representation of MRPOA in this proceeding.

5. Because MRPOA is no longer represented by legal counsel in this proceeding, its continued participation in this matter would constitute the unauthorized practice of law. Persons not licensed to practice law may represent themselves, but are prohibited from representing separate legal entities, such as corporations, in legal matters except under certain circumstances.

A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys.

See State ex rel. Daniel v. Wells, 191 S.C. 468, ___, 5 S.E.2d 181,186 (1939) *citing* Clark v. Austin, 340 Mo. 467, 101 S.W. 2d 977, 982 (1937). (Emphasis supplied).

Since a corporation cannot practice law, and can only act through the agency of natural persons, it follows that it can appear in court on its own behalf only through a licensed attorney. It cannot appear by an officer of the corporation who is not an attorney, and may not even file a complaint except by an attorney, whose authority to appear is presumed; in other words, a corporation cannot appear in propria persona.

State ex rel. Daniel v. Wells, *supra*. *citing* Mullin-Johnson Company v. Penn Mutual Life Insurance Company, 9 F. Supp. 175 (D.C Cal. 1934).¹ See also 26 S.C. Code Ann. R.103-804.T

¹ The Supreme Court has since modified Wells to allow a business, such as MRPOA, to be represented by a non-lawyer officer, agent or employee in civil magistrate's court proceedings. See In re Unauthorized Practice of

(Supp. 2010).² Although unlicensed persons may appear and represent clients where the matter involves an agency which has adopted regulations authorizing same, see In re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar, 309 S.C. 304, 306, 422 S.E.2d 123, 124 (1992), this Commission has adopted no regulation which would permit MRPOA's participation in this proceeding without representation by an attorney licensed to practice in South Carolina.³ See also Order No. 2007-834, dated November 19, 2007, Docket No. 2007-319-W (denying South Atlantic Utilities, Inc.'s request for a waiver of the requirement that it be represented by a licensed attorney). Therefore, MRPOA's continued participation in this proceeding without representation would constitute the unauthorized practice of law and, consequently, the Commission should dismiss their participation in this proceeding as a party of record.

6. Additionally, and contrary to the position asserted by MRPOA's previous counsel of record, the individual members of MRPOA are not parties to this proceeding. In its letter dated December 22, 2010, previous counsel for MRPOA asserted that "MRPOA's members are parties to this proceeding and intend to fully participate as such with all rights attendant thereto." To the contrary, the Petition did not request that the individual members be made parties of record. Rather, the Petition reflects that only MRPOA, as an incorporated entity, sought "to

Law Rules Proposed by the South Carolina Bar, 309 S.C. 304, 306, 422 S.E.2d 123, 124 (1992). This modification is inapplicable in the instant case, however, since this matter is not a civil magistrate's court proceeding.

² 26 S.C. Code Ann. R.103-804.T permits persons to appear in a representative capacity only in the following instances:

- (a) An individual may represent himself or herself in any proceeding before the Commission.
- (b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission.

³ May River recognizes that 26 S.C. Code Ann. Regs 103-805.E allows an entity to participate in a proceeding without counsel "in any unopposed case." However, "if the case becomes opposed, the unrepresented entity must obtain legal representation by an attorney authorized to practice law in South Carolina in order for the commission to allow the matter to proceed." MRPOA is contesting the rate application filed by May River; therefore, this proceeding is opposed and MRPOA cannot avail itself of this procedure.

intervene in this proceeding with full rights to participate as a party of record in so far as its interests might appear.” [Emphasis supplied.] Petition at 1. Furthermore, the individual members of the MRPOA have not been named in any of the pleadings to the Commission, have not made any filings in this docket,⁴ and have not identified the facts from which the nature of their alleged rights or interests could be determined, the grounds of their purported intervention, or their position in this proceeding. See 26 S.C. Code Ann. Reg. 103-825.A(3). Therefore, any claim that the individual members either petitioned to intervene or were previously admitted as parties of record is erroneous and contrary to the record in this matter.⁵

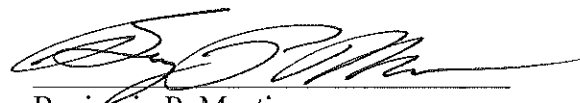
CONCLUSION

For the foregoing reasons, May River respectfully requests that the Commission dismiss May River Plantation Owners’ Association, Inc. as a party of record in this proceeding, preclude it from participating in this matter without representation by a licensed attorney, and for such other relief as the Commission may deem appropriate.

[SIGNATURE PAGE FOLLOWS]

⁴ Should the Commission determine that the individual members are, in fact, parties of record, their participation in this proceeding would be limited to cross-examination of the other parties’ witnesses inasmuch as no individual member has prefiled testimony in this docket. See 26 S.C. Code Ann. Reg. 103-845.

⁵ Although the individual members are not parties of record, May River does not oppose the participation of its individual customers in this proceeding as public witnesses without the right of cross-examination.



Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorney for

May River Water Company, Inc.

Columbia, South Carolina

This 30th day of December, 2010.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2010-132-W

RECEIVED
2010 DEC 30 AM 10:53
SOUTH CAROLINA
PUBLIC SERVICE
COMMISSION

IN RE:)
)
Application of May River Water)
Company, Inc. for adjustment of)
rates and charges and modifications)
to certain terms and conditions for)
the provision of water service.)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of the **Motion to Dismiss May River Plantation Owner's Association, Inc.** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

Mr. Joseph Highsmith
41 Pine View Drive
Bluffton, South Carolina 29910

Mr. Lee Brewer
53 Pine View Drive
Bluffton, South Carolina 29910



Clark Teaster

Columbia, South Carolina
This 30th day of December, 2010.